IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE EIGHTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 24870 of 2000

Between:

M/s. Sri Srinivasa Groundnut Industries, rep. by its Proprietor, Mr. R. Srinivasulu Reddy,
Gangavaram, Palamaner - 517 408. Chittoor District.

..... PETITIONER

AND

1 The Assistant Commercial Tax Officer No.1
Anantapur.
2 The Assistant Commercial Tax Officer No.II,
Anantapur.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a Writ or Order or direction more particularly one in the nature of a Writ of Mandmaus declaring the action of the Respondents in collecting advance tax on transport of groundnuts as illegal, arbitrary and in violation of Article 265 of the Constitution of India and the APGST Act and consequently restrain the Respondents from collecting advance tax from the Petitioner on the consignment of groundnut and direct the Respondents to refund Rs.8,100/- under Rule 46(4) relating to tax collected at on 16-11-2000 and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.S.DWARAKANATH

Counsel for the Respondent No.: SPL GP FOR TAXES

The Court made the following :

O r d e r: (Per BRSR,J)

The action of the 1st respondent in collecting the advance tax on transport of groundnut is challenged in this writ petition.

The petitioner is a trader in groundnut. His main business is sale of groundnut to other dealers and oil millers in Andhra Pradesh. The petitioner admittedly, is a registered dealer under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'). It is the case of the petitioner that during the course of its business it purchased groundnut on 16-11-2000 from the ryots at Kondapuram and P.Siddarampuram in Anantapur District. While the groundnuts were being transported to the place of business at Palamaner under the relevant way bill dated 16-11-2000 the respondents 1 and 2 have collected tax from the petitioner at the check-post by valuing the goods and levying tax at 4% under the guise of advance tax. It is stated that the advance tax was collected as follows.

Way bill No. Groundnut valued Tax collected Date
& date at Rs. Rs.

0429495
16-11-2000 1,01,250 4,050 16-11-2000

0429494
16-11-2000 1,01,250 4,050 16-11-2000

The contention is that though there is no provision under the Act to collect advance tax in such a manner, the petitioner was forced to pay tax of Rs.4,00/- each totaling Rs.8,100/- at the rate of 4% on the value of goods mentioned to avoid detention of the vehicle. However, the respondents have issued receipts evidencing the said

payment.

In ***Ramanadh Poultry Farms V. Assistant Commercial Tax Officer*** a Division Bench of this Court speaking through PVRR, J (As His Lordship then was) observed that the check post authorities have no jurisdiction to collect the tax in advance as if the sale had taken place. "It is a different matter if the check-post officer, on a perusal of the relevant documents, comes to the conclusion that the documents are spurious or that the consignment of goods is not supported by the requisite documents evidencing bona fide purchase from a registered dealer. Even in such a case, the check-post official is expected to record the reasons and arrive at a finding on the basis of a summary enquiry as per the relevant provisions contained in Sec. 29 of the Act read with Rules 46 and 47 of the Andhra Pradesh General Sales Tax Rules, 1957". It is further held that "we make it clear that tax collected at the check-post cannot be resorted to on the presumption that the goods are likely to be sold clandestinely and the tax will be evaded by the petitioners". (emphasis is of ours).

The subject matter that arises for consideration is squarely covered by the decision referred to hereinabove and following the said decision, we hold that levy and collection of tax by the respondents at the check-post is invalid in law. As regards the tax already collected, it shall be open to the petitioner to file an application for refund before the concerned Officer and if any such application is filed, the same shall be considered as expeditiously as possible. However, it is open to the department to make the adjustment of tax refundable against the taxes if any due from the petitioners.

The writ petition is accordingly allowed to the extent indicated above. No costs.

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B.Sudershan Reddy, J.

8th June, 2005

Ramesh Ranganathan, J.

grr